



To the Honorable Council
City of Norfolk, Virginia


December 15, 2015

From: Jared M. Chalk, Senior Business
Development Manager

Subject: Ordinance Approving the
Terms and Conditions of a Real Estate
Purchase Agreement for property
located at Bank Street and Plume
Street

Reviewed: 
Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: 
Marcus D. Jones, City Manager

Item Number:
R-8

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving the terms and conditions of a real estate purchase agreement and the conveyance to the City of Norfolk of certain property fronting Main Street, Bank Street and Plume Street in the City of Norfolk and authorizing the City Manager to accept the deed on behalf of the City.

IV. **Analysis**

The City will purchase the property fronting Main Street, Bank Street and Plume Street, which includes both retail space and approximately 785 parking spaces.

V. **Financial Impact**

This purchase has no impact on the City's General Fund. Proceeds from the issuance of bonds will fund the purchase of this property acquisition and the Parking Facilities Enterprise Fund will pay the related debt service on the bonds. This ordinance provides for the expenditure of the sum of up to \$10,000,000 from the Parking Facilities Enterprise Fund heretofore appropriated for the acquisition of the property.

VI. **Environmental**
N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Development, Department of General Services, Department of Finance, City Attorney's Office and the City Manager's Office.

Supporting Documentation from the City Attorney's Office:

- Ordinance
- Agreement

Form and Correctness Approved: *ZAP*By *[Signature]*
Office of the City Attorney

Contents Approved:

By *[Signature]*
DEPT. Development

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

\$ 10,000,000⁰⁰

Christine Dancygryn
Acting Director of Finance

Account

Date

CAP
Parking Capital Improvement
Project
Bond Proceeds

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF THE REAL ESTATE PURCHASE AGREEMENT AND THE CONVEYANCE TO THE CITY OF NORFOLK OF CERTAIN PROPERTY FRONTING MAIN STREET, BANK STREET AND PLUME STREET IN THE CITY OF NORFOLK AND AUTHORIZING THE CITY MANAGER TO ACCEPT THE DEED ON BEHALF OF THE CITY.

- - -

WHEREAS, City Walk One LLC, ("Seller") has entered into a Purchase and Sale Agreement dated October 9, 2015 with AT One Commercial Place, LLC and AT Two Commercial Place, LLC (the "Contract") to purchase certain real estate including fee simple title to a tract of real estate fronting on Main Street, Bank Street and Plume Street in the City of Norfolk as more particularly described on Exhibit "A" attached hereto and made a part hereof together with the building constructed thereon containing both retail space and a parking garage and all easements and other appurtenances appertaining thereto (collectively, the "Property"); and

WHEREAS, Seller desires to sell and City of Norfolk ("Purchaser") desires to purchase the Property upon the terms and conditions hereinafter set forth.

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the conveyance by City Walk One LLC, to the City of Norfolk of certain property fronting Main Street, Bank Street and Plume Street in the City of Norfolk, as more particularly described in Exhibit "A" attached hereto and made a part hereof, is hereby approved and the Real Estate Purchase Agreement, a copy of which is attached as Exhibit "B", is hereby approved.

Section 2:- The City Manager is authorized to correct, amend, or revise the Real Estate Purchase Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Real Estate Purchase Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That that City Manager and other proper officers of the City are hereby authorized to accept a deed from Seller for the property, in form satisfactory to the City Attorney, and to do all things necessary and proper to effect the conveyance of the property to the City.

Section 4:- That the expenditure of the sum of up to \$10,000,000.00 from funds heretofore appropriated for the acquisition of the property, including all related transactional costs, is hereby authorized and approved.

Section 5:- That this ordinance shall be in effect from and after its adoption.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of the 15th day of December, 2015 (the "Effective Date") between **CITY WALK ONE LLC**, a Virginia limited liability company ("Seller"), and the **CITY OF NORFOLK, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("Purchaser").

WITNESSETH:

WHEREAS, Seller is, or will be, the assignee of the purchaser's rights under a Purchase and Sale agreement dated October 9, 2015 (the "Contract"), to purchase certain real estate including fee simple title to a tract of real estate fronting on Main Street, Bank Street and Plume Street in the City of Norfolk, as more particularly described on **Exhibit "A"** attached hereto and made a part hereof together with the building constructed thereon containing both retail space and a parking garage and all easements and other appurtenances appertaining thereto (collectively, the "Property").

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the promises and of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. **Property:** Subject to the terms and conditions herein, Seller agrees to sell to Purchaser and Purchaser agrees to buy from Seller the Property.

2. **Purchase Price:** Purchaser shall pay to Seller, as the purchase price for the Property, the sum of Ten Million and No/100 Dollars (\$10,000,000.00) (the "Purchase Price") which shall be payable by wire transfer of funds to the settlement agent for disbursement to Seller.

3. **Due Diligence.** At all reasonable times prior to Closing and subject to any limitations in the Contract, Purchaser, its agents, employees, designees, representatives and contractors (collectively, the "Purchase Parties"), at Purchaser's sole cost and expense, shall have the right to do the following: (i) to enter the Property to perform such tests, inspections and examinations of the Property as Purchaser deems advisable; and (ii) to make investigations with regard to title to the Property, soil and environmental tests (including invasive testing), matters of survey, flood plain of the Property, utilities availability, zoning and building code, and other applicable governmental requirements with regard to the Property. To the extent allowed by applicable law, Purchaser shall indemnify, defend and hold Seller harmless from and against all cost, loss, damage and expense, including reasonable attorneys' fees, arising out of the activities of Purchaser and the Purchaser Parties upon the Property pursuant to this Section 3. The indemnification contained in this Section 3 does not include indemnification for loss, cost or expense (including attorney's fees) resulting from any unfavorable test results or the discovery of any undesirable existing conditions on the Property, including, without limitation, any loss resulting from any decrease in the fair market value of all or any portion of the Property or the inability of Seller to market the Property due to any such discovery or unfavorable test results but shall in all events include all liability incurred by Seller under the Contract as the result of the

activities of Purchaser and Purchaser Parties. The preceding indemnity obligation shall survive termination of this Agreement. Seller agrees to cooperate with Purchaser and the Purchaser Parties in Purchaser's activities hereunder so long as Seller does not incur any out-of-pocket expense. In this regard, upon Seller's execution of this Agreement, Seller agrees to furnish Purchaser with copies of all surveys, title policies, environmental reports, soil reports and/or engineering studies or other documentation relating to the Property in Seller's possession or control.

3.1. If Purchaser determines that the results of its inspections, investigations and the like are unsatisfactory to Purchaser, Purchaser may terminate this Agreement by giving Seller written notice thereof pursuant to Section 14 on or before the expiration of the Due Diligence Period, which shall be the period of twenty (20) days from the date of this Agreement. In the event there is a delay in Closing, the Due Diligence Period shall be extended for an additional sixty (60) days or such other period as is agreed to in writing by the parties hereto.

4. Representations and Warranties: In order to induce Purchaser to enter into this Agreement, and in addition to the representations and warranties contained elsewhere in this Agreement, Seller makes the following representations, warranties, and covenants.

4.1. Seller is duly organized and validly existing under the laws of the Commonwealth of Virginia with full power and authority to enter into the transactions set forth in this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, and is enforceable against Seller in accordance with its terms.

4.2. There are no pending or, to Seller's actual knowledge, threatened, judicial, municipal or administrative proceedings affecting the Seller or any portion of the Property (including condemnation proceedings) or affecting Seller's right to sell any portion of the Property.

4.3. Seller has incurred no obligation to municipal or state authorities with respect to any portion of the Property, to dedicate any part of the Property, to improve any part of the Property or to construct any off-site improvements on adjacent property as a condition to rezoning, use permit or similar application and Seller has no actual knowledge that the Property is subject to any such obligations incurred by anyone else.

4.4. To Seller's actual knowledge, the Property is not in violation of any wetlands or environmental law, or other zoning, subdivision or land use law.

4.5. To Seller's actual knowledge, the Property does not contain any Hazardous Materials (as defined in Exhibit "B" attached hereto), other than incidental or trace quantities not in violation of Environmental Requirements (as defined in Exhibit "B" attached hereto), and the Property has not been used for the use, manufacturing, storage, discharge, release or disposal of Hazardous Materials.

4.6. To Seller's actual knowledge, except for any matters disclosed in any environmental report furnished by Seller to Purchaser, Seller is not aware of any environmental or other engineering study that reveals environmental, soil or other conditions within the Property that would materially adversely affect Purchaser's use of the Property.

As a condition to Purchaser's obligation to purchase the Property, as of Closing, the representations and warranties made by Seller in this Section 4 shall be true in all material respects.

5. Conditions.

The obligation of Purchaser under this Agreement to purchase the Property from Seller is subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part by Purchaser in writing on or prior to the Closing Date, as defined below):

5.1. Title to the Property shall be good and marketable, and subject to no liens, encumbrances, leases, licenses, rights of occupancy, security interests, restrictions, rights-of-way, easements or encroachments (collectively "Exceptions") other than (A) the Permitted Exceptions, (B) those leases, tenancies, and rights of occupancy set forth in Exhibit "C" attached hereto and made a part hereof (the "Existing Leases"), and (C) deeds of trust to be satisfied in full out of the proceeds of the Purchase Price. Purchaser's title insurance company shall be prepared to issue, at its standard premium rates, a title insurance policy insuring the title to the Property subject only to the Permitted Exceptions in the amount of the Purchase Price;

5.2. Receipt by the Purchaser of a letter of reliance upon a favorable Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by Purchaser at Purchaser's expense; and

5.3. As of the Closing Date, (i) Seller's representations and warranties shall be true and correct in all material respects, and (ii) Seller shall have performed all of its other obligations under this Agreement.

In the event that any of the foregoing conditions to Closing have not been met or waived in writing by Purchaser on or before the Closing Date, Purchaser shall have the right to terminate this Agreement at any time thereafter by written notice to Seller. In the event of such termination, thereafter, this Agreement shall be deemed terminated and neither party shall have any further obligation to the other (except as otherwise expressly provided in this Agreement) and except for the breach of any covenant which causes a non-satisfaction of the condition giving rise to such termination. Further, so long as Seller is not in default of this Agreement, in the event Purchaser terminates this Agreement, Purchaser shall provide to Seller any and all environmental and engineering reports prepared by Purchaser or Purchaser's agents.

6. Risk of Loss: The risk of loss or damage to the Property by fire or other casualty shall remain with the Seller until the time of Closing at which time the risk of loss shall be assumed by the Purchaser. In the event of substantial loss or damage to the Property before Closing, Purchaser will have the option of either terminating this Agreement or affirming this Agreement, in which event Seller will assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

7. Evidence of Title: Seller will provide to Purchaser at Seller's expense a title insurance commitment issued by the Title Company (the "Title Commitment") in the amount of the Purchase Price, committing to insure title to the Property in Purchaser.

The cost of any title insurance policy shall be paid by Purchaser at Closing. If the Title Commitment shows exceptions to title other than those listed on **Exhibit "D"** which are unacceptable to Purchaser in its sole discretion, Purchaser shall give Seller written notice thereof within ten (10) days after receipt of the Title Commitment or survey, as the case may be. Unless Seller gives Purchaser written notice within ten (10) days after the receipt of Purchaser's list of unacceptable title exceptions that Seller will cure the unacceptable title defect(s) prior to Closing, Purchaser may, at its election: (i) terminate this Agreement or (ii) waive the unacceptable and uncured title defect(s) and proceed with Closing as if the unacceptable title defect(s) did not exist. Seller covenants that it will not voluntarily create or cause or permit a lien or encumbrance to attach to the Property between the Effective Date and Closing, other than those which may be fully paid by application of Seller's proceeds at Closing. Any lien or encumbrance attaching to the Property after the date of Title Commitment as well as any lien or encumbrance which is a mortgage, deed of trust, judgment lien, tax lien, or similar lien against the Property (whenever attaching) which can be discharged by the payment of money shall be discharged by Seller at, or prior to, Closing. If Seller agrees to cure any title defects prior to Closing but does not do so for any reason then Purchaser shall have the same options as described in clause (i) and (ii) of this Section 7. The exceptions to title listed on **Exhibit "D"**, or other matters that are of record as of the Effective Date of the Title Commitment or would be disclosed by an accurate physical survey of the Property and any other matters of title or survey to which Purchaser accepts or waives its objection shall be "Permitted Exceptions". Purchaser agrees that the Property will be subject to a restriction that the exterior appearance of the building which is part of the Property may not be altered for a period of seven (7) years from the date on which the Property is conveyed to Purchaser; the foregoing restriction will be a "Permitted Exception." Seller agrees that in the event the restriction is for a shorter duration or does not apply to the Property, Seller shall waive or modify this restriction in writing and shall execute and record any instruments necessary to evidence such waiver at Seller's sole cost and expense.

8. Closing: The closing of the transaction contemplated herein (the "Closing") shall be on the same date (the "Closing Date") as the closing on Seller's acquisition of the Property pursuant to the Contract, which is currently scheduled to be on or before January 7, 2016. Closing shall be at the offices of Chicago Title Insurance Company (the "Title Company") in Richmond, Virginia or such other place as is mutually agreeable. Possession of the Property shall be delivered to Purchaser as of the Closing Date, free and clear of all leases, tenancies and rights of occupancy, except for the Existing Leases.

8.1. On the Closing Date, Seller shall cause to be delivered to Purchaser or the Title Company fully executed copies of the following, in addition to any other documents required to be delivered under the terms of this Agreement:

(a) A Special Warranty Deed (the "Deed") conveying title, to the Property subject to the Permitted Exceptions;

(b) A duly executed affidavit establishing that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act of 1980, as amended, relieving Purchaser of any withholding requirements imposed by that code section;

(c) Any tax-related or other affidavits required by law in connection with the transfer of the Property;

(d) Appropriate resolutions or consents authorizing the sale of the Property by Seller;

(e) A certificate that the representations and warranties set forth in Section 4 of this Agreement are true and correct as of the Closing Date (or if not true and correct, describing the conditions causing the representation or warranty to be untrue or incorrect). If the certificate reflects facts that are material and adverse to Purchaser's acquisition and ownership of the Property, then Purchaser shall have the right to terminate this Agreement by written notice to Seller;

(f) Such affidavits, lien releases or other documents, including documents establishing the existence of Seller and the authority of the person executing documents on behalf of Seller to do so, as the Title Commitment and Purchaser's title insurance company may reasonably require to provide to Purchaser (and any lender) standard title insurance coverage including a standard owner's affidavit as to mechanics' liens and possession;

(g) An assignment to the Purchaser or evidence reasonably satisfactory to the Purchaser of the termination of that certain Grant Agreement dated ____, 2014 between the Economic Development Authority of the City of Norfolk, as grantor, and AT One Commercial Norfolk LLC, as grantee;

(h) An Assignment of Lease and Rents for each of the Existing Leases;

(i) The Settlement Statement

8.2 On the Closing Date Purchaser shall cause to be delivered to Seller the following:

(a) The Purchase Price; and

(b) The Settlement Statement.

8.3 Seller agrees to pay the expenses of preparing the deed and of the recordation tax applicable to grantors and agrees to deliver possession of the Property to Purchaser at Closing. Purchaser will pay all other fees charged in connection with recordation of the deed.

Seller and Purchaser agree that the Title Company selected by the Seller shall act as the settlement agent at Seller's expense. The Title Company shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications in accordance with state and federal law and IRS reporting requirements.

9. Adjustments and Prorations. All rents (including an estimated amount for daily/short-term parkers in the garage), interest, taxes, insurance premiums, utility bills, and fuel oil, if any, will be prorated as of the date of Closing. Notwithstanding anything to the contrary

contained in this Agreement, Seller shall pay, on or prior to the Closing Date, any past due or accrued real estate taxes that are payable with respect to periods prior to Closing, and any other amounts due with respect to the Property as of the Closing Date including, without limitation, any indebtedness constituting a lien against the Property or other lien that can be satisfied by the payment of money.

10. Parking Lease: Subject to the approval of City Council, Seller and Purchaser shall enter into a lease (the "Lease") for four hundred (400) residential and/or commercial use parking spaces (the "Leased Spaces") in the parking garage which is part of the Property (the "Garage") for a term of five (5) years at a monthly rent equal to the then current monthly parking rate for residential parking in the Garage, as established from time to time by City Council, times the number of parking spaces. The rate shall be increased from time to time by written notice from the City in accordance with the parking rates adopted by City Council; however, Purchaser agrees that such rates shall not exceed the standard rates applicable to other residential users of the Garage unless such Leased Spaces are used for office parking. Seller shall have the right to use the Leased Spaces for office parking provided that rent for any Leased Spaces used for office parking shall be based the then current monthly parking rate for office parking in the Garage, as established from time to time by City Council.

Subject to the approval of City Council, the Lease will contain such customary provisions as will make Seller's leasehold interest "financeable" including the obligation of Purchaser to give Seller's lenders notice of defaults and the opportunity to cure and a "new lease" provision in the event that the Lease is terminated due to Seller's default; provided that any such "new lease" shall be subject to approval by City Council.

11. Commissions: Seller and Purchaser each represent to the other that it has not dealt with any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement. The parties hereto each agree to indemnify, defend and hold the other party harmless against any loss, liability, damage, cost, claim or expense, including interest, penalties and reasonable attorneys' fees, that the other party shall incur or suffer by reason of a breach by the indemnifying party of the representation and warranty set forth in the preceding sentence. This Section 11 shall survive Closing.

12. Counterpart Originals: This Agreement may be executed in multiple original counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

13. Assignment: This Agreement and Purchaser's rights, duties and obligations hereunder may not be delegated, transferred or assigned by Purchaser without the prior written consent of Seller. This Agreement and Seller's rights, duties and obligations hereunder may not be delegated, transferred or assigned by Seller without the prior written consent of the City Manager of the City of Norfolk. Any assignee or transferee of either party shall expressly assume all of its assignors duties, liabilities and obligations under this Agreement by written instrument delivered to the other party. No assignment by either party shall result in the release of its liabilities and obligations hereunder.

14. Notices: All notices, requests, consents, and other communications hereunder shall be in writing and shall be personally delivered, mailed by certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service paid by or billed to the sender:

If to Purchaser: City Manager
810 Union Street
City Hall Building, Suite 1101
Norfolk, VA 23510

With a copy to: City Attorney
Office of the City Attorney
City Hall Building
810 Union Street, Suite 900
Norfolk, VA 23510

If to Seller: City Walk One LLC
Vincent J. Mastracco, Jr., Esq.
Kaufman & Canoles, a Professional Corporation
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Phone: (757) 624-3131
Fax: (888) 360-9092

With a copy to: Charles E. Land, Esq.
Kaufman & Canoles, a Professional Corporation
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Phone: (757) 624-3131
Fax: (888) 360-9092

Any notice, consent, request, or other communication shall be deemed effective when it is delivered (if hand-delivered or delivered by overnight courier) or on the third (3rd) business day after it is deposited in the United States mail if sent by certified mail, return receipt requested, as the case may be.

15. Waiver to Conditions: Notwithstanding any condition required to be satisfied at or prior to the Closing Date by Purchaser or Seller, Purchaser shall have the right to waive the satisfaction of such condition in writing and proceed with Closing, in which event Seller shall have no further liability in regard to such condition.

16. Seller's Default: If Seller defaults under any of its covenants, agreements, or obligations under this Agreement, then Purchaser shall have the right as its sole and exclusive remedy either to (i) pursue an action against Seller for specific performance, or (ii) to terminate this Agreement. This Section 16 shall survive Closing.

17. Purchaser's Default: If Purchaser defaults under any of its covenants, agreements, or obligations under this Agreement, then Seller shall have the right to pursue any and all remedies available at law or in equity.

18. Section Headings: The section headings as herein used are for convenience or reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations, and warranties herein set forth or limit the provisions or scope of any section.

19. Waiver of Jury Trial. Each of Seller and Purchaser waives any right to a trial by jury in any action or proceeding which is directly related to this Agreement.

20. Other Provisions: This Agreement constitutes the entire agreement between the parties with respect to the transaction contemplated herein, and supersedes all prior discussions, understandings or agreements between the parties. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to the principles of conflict of laws. In the event of a conflict hereunder, venue shall be in the Circuit Court of the City of Norfolk. Failure by Purchaser or Seller to enforce any of their respective rights hereunder shall not constitute a waiver thereof, except as provided for herein. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. If the expiration of any time period measured in days occurs on a Saturday, Sunday or legal holiday, such expiration shall automatically be extended to the next day which is not a Saturday, Sunday or legal holiday. Wherever the word "including" is used in this Agreement it shall mean "including, but not limited to." All covenants, representations and warranties made by the Seller or Purchaser shall survive the Closing for a period of one (1) year and any investigation at any time by or on behalf of the Seller or Purchaser. No claim may be brought by either party against the other for breach of or representation or warranty unless written notice of the claim is given within one (1) year after the Closing. The foregoing notwithstanding, the one (1) year limitations set forth above shall not be deemed to apply to the warranty set forth in the Deed for the Property from Seller to Purchaser

[Signatures appear on the following pages]

[Signature Page for Real Estate Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the day and year first above written.

SELLER:

CITY WALK ONE LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

PURCHASER:

CITY OF NORFOLK

By: Marcus D. Jones, City Manager

ATTEST:

City Clerk

APPROVED TO AS CONTENTS:

Director of Development

APPROVED AS TO FORM AND CORRECTNESS:

Assistant City Attorney

EXHIBIT "A"
Legal Description

Tract 3:

That certain parcel of land situate in the City of Norfolk, Virginia, shown as "Parcel 72" on Sheet 1 of 2 on plat of survey prepared by Boek & Clark's National Surveyors Network, dated February 17, 1997, last revised April 29, 1997, entitled "ALTA/ACSM Land Title Survey for the Patterson Project B&C Site No. 12 NationsBank Center & Overhead Pedestrian Walkway One Commercial Place, Norfolk, Va. And NationsBank Parking Garage Bank Street, Norfolk, Va.", Network Project No. 96881-12, and more particularly described as follows:

Beginning at a point in the northern line of Main Street as shown on said plat at the point of curve of the northeastern intersection of Main Street and Bank Street, and from such point of beginning along the arc of a curve to the right, the radius of which is 10.00 feet, an arc distance of 16.49 feet to a point in the eastern line of Bank Street;

Thence North 04 34' 08" East a distance of 40.09 feet to a drilled hole;

Thence North 06 03' 35" East a distance of 240.21 feet to a drilled hole in the southern line of Plume Street;

Thence South 85 04' 25" East a distance of 132.50 feet to a point at a curve to the right having a radius of 5.00 feet;

Thence along said curve an arc distance of 7.43 feet to a point in the western line of Commercial Place;

Thence South 00 05' 25" West a distance of 263.50 feet to a point at a curve to the right having a radius of 10.00 feet;

Thence along said curve an arc distance of 15.71 feet to a point in the northern line of Main Street;

Thence North 89 54' 35" West a distance of 144.74 feet to the point of beginning.

Being the same property conveyed to At One Commercial Norfolk I.L.C., a Delaware Limited Liability Company by Deed from U.S. Bank National Association not in its individual capacity, but solely as successor Owner Trustee to State Street Bank and Trust Company of Connecticut, National Association under the Second Amended and Restated Trust Agreement (1997-D) dated as of December 15, 2005 and First States Investors 3500, I.L.C., a Delaware Limited Liability Company dated July 29, 2011, recorded August 10, 2011 in Instrument No. 110015725 in the Clerk's Office of the Circuit Court of Norfolk City, Virginia.

Exhibit "B"

Environmental Definitions

Hazardous Materials. "**Hazardous Materials**" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) ("**CERCLA**") or any regulations promulgated under or pursuant to CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) ("**RCRA**") or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are classified or considered to be hazardous or toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Property. Hazardous Materials shall include, without limitation, any substance, the presence of which on the Property (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Property or adjacent property; or (C) which, if it emanated or migrated from the Property, could constitute a trespass.

Environmental Requirements. "**Environmental Requirements**" shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

Exhibit "C"

Existing Leases

Exhibit "D"

Permitted Exceptions

1. Real Estate Taxes for the fiscal tax year ending June 30, 2016, and subsequent years, not yet due and payable.
2. Stormwater fees that become due and payable after the date of the recordation of the recordation of the deed.
3. Rights of parties entitled to possession, as tenants only, under the unrecorded leases listed as **Exhibit C** and the Lease.
4. Terms, provisions, restrictions, conditions, easements and reservations contained in the Deed for Norfolk Redevelopment and Housing Authority to Virginia National Bank, dated June 7, 1965 and recorded in Deed Book 1019, at page 657.
5. Covenant contained in instrument dated September 20, 1969, and recorded in Deed Book 1150, at page 365.